vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1481 OF 2003

Sakharam Deoram Pawar
age 30 years, r/at
Saptashrungi Gad, Tal.:Kalwan
Dist.: Nashik ... Appellant

V/s.

The State of Maharashtra
(At the instance of Abhona
Police Station) ... Respondent

Mrs.Anita Agarwal for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 16, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The Appellant has been convicted for the offences punishable under sections 498A, 302 and 309 of the Indian Penal Code. The case of the prosecution briefly stated is that the appellant was ill treating his wife since he suspected her character. He often assaulted her after consuming liquor. Whenever his wife, Anusaya, refused to accede to his demand for money to purchase liquor, he assaulted her. The prosecution has alleged that on 26.3.1996 before dawn, the appellant demanded money from Anusaya. Since she was unable to fulfil his demand, the appellant was enraged and gave his wife a blow on the neck with an axe. Thereupon Anusaya fell down. Her brother Dhanaji, PW6, her father in law and other persons rushed from neighbouring

houses. The brother of Anusaya, PW6, and some others removed her to the hospital where she was treated by the Doctor, PW4. The dying declaration of Anusaya was then recorded by an Executive Magistrate. The appellant in the meanwhile attempted to commit suicide by setting himself ablaze. PW10, the PSI had the appellant treated for his burn injuries at the Civil hospital, Nashik. A seizure Panchanama was recorded wherein the weapon of assault namely the axe was seized. The postmortem notes indicate that the cause of death of the Appellant was cardio-respiratory failure on account of perforatory wound on the right shoulder with a fracture of the scapula and ribs.

2. The main evidence against the appellant is the testimony of the brother of the deceased i.e., PW6. He has stated that he was asleep in a hut which was a little away from the hut occupied by the deceased and the appellant alongwith their children. He has deposed that he heard his sister shouting between 3 and 3.30 am of 26.3.1996 when he rushed to his sister’s hut. He saw an injury on her neck and blood oozing out from the injury. He also saw the appellant standing near his sister with an axe in his hand. He has also deposed that the appellant had sustained burn injuries and that the appellant had informed him that he had tried to set himself ablaze after assaulting his wife with an axe.

3. Having reappreciated the evidence before the

trial Court, we are of the view that the appellant had no intention to murder his wife. However, it is obvious that the accused would have known that the injury inflicted by him on his wife with an axe would result in her death. The prosecution has been unable to establish that the appellant had any intention to cause the death of his wife. The very fact that he had attempted to set himself ablaze after inflicting the injury on his wife indicates that he was filled with remorse as he had no intention to kill his wife.

4. We are not inclined to interfere with the findings recorded and the sentence imposed in respect of the offence under section 498A, 302 and 309 of the Indian Penal Code. The appellant is convicted under section 304 part II and sentenced to suffer rigorous imprisonment for a period of 10 years. However, since he has already undergone that period in jail, he is liable to be released immediately if not otherwise required.

5. Appeal partly allowed accordingly.